

amendment is allowed, "the perception of prejudice, like beauty, is largely in the eyes of the beholder." *Lugino's, Inc. v. Pezrow Companies, Inc.*, 178 F.R.D. 523, 525 (D. Minn. 1998). As in *Lugino's, Inc.*, the defendants in the case at bar "can legitimately complain that the untimely filing of the Plaintiff's Motion, at a time when discovery is essentially completed, either denies the Defendants an opportunity to fully explore the dimensions of the proposed claim, or requires a further delay in the scheduling of a Trial, as discovery on that issue ensues." *Id.*

Simply, there is no reason why the plaintiff could not have filed this motion much earlier in the litigation. The basis for the motion was known as early as April 9, 2004, when defendants filed their Answer (#9) raising the issue as an affirmative defense. This defense has never been withdrawn.

Under the circumstances, I find that the plaintiff's motion was not timely filed and that amending the complaint at this late stage would be unfairly prejudicial to the defendants.

IT IS ORDERED that plaintiff's Motion for Leave to File Amended Complaint (#48) is denied.

Pursuant to NECivR 72.2, a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) days after being served with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law.

DATED July 15, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**